

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

SENTINEL TRUST COMPANY, et al.)	
)	
Appellants,)	Sup. Ct. No. M2005-01073-SC-R11-CV
)	
v.)	Ct. App. No. M2005-01073-COA-R3-CV
)	
KEVIN P. LAVENDER, Commissioner,)	Davidson County Chancery No. 04-1934-I
)	
Appellee.)	
)	

**ANSWER OF APPELLEE ACTING COMMISSIONER GREG GONZALES
IN OPPOSITION TO APPLICATION FOR PERMISSION TO APPEAL**

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INTRODUCTION

Appellee, the Commissioner of the Tennessee Department of Financial Institutions, files this Answer in Opposition to Appellants' Application for Permission to Appeal, pursuant to Rule 11, Tennessee Rules of Appellate Procedure, from the decision of the Tennessee Court of Appeals, affirming the trial court's denial of a petition for supersedeas and dismissal of the writ of certiorari. In doing so, the Court of Appeals affirmed the trial court's finding that there was no effectual relief that could be granted and, therefore, that the case was moot. The Court of Appeals further affirmed the trial court's determination that: (1) the Tennessee Banking Act, which authorizes the Commissioner to appoint a receiver for a state bank or trust company, did not violate the separation of powers provision of the Tennessee Constitution; (2) all of the provisions of the Tennessee Banking Act applied to state-chartered trust companies, including Sentinel and, therefore, the Commissioner did not exceed his jurisdiction or act illegally in taking possession of Sentinel; and (3) there was substantial and material evidence in the record to support the Commissioner's decision to take possession of and liquidate Sentinel Trust Company, pursuant to the Tennessee Banking Act.

The record in this case contains eight (8) volumes of the technical record, which shall be referred to as "TR"; seven (7) volumes of transcript of proceeding before the Davidson County Circuit Court, which shall be referred to as "TE"; three (3) sealed volumes of the Administrative Record, which shall be referred to as "AR"; and three (3) volume of exhibits (Exhibits 1-34), which shall be referred to as "Exh.".

ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals correctly held that all the provisions of the Tennessee Banking Act apply to state-chartered trust companies, including Sentinel Trust Company and, therefore, that the Commissioner did not exceed his jurisdiction or act illegally in taking possession of Sentinel?

2. Whether the Court of Appeals correctly held that the Tennessee Banking Act, which authorizes the Commissioner to appoint a receiver for a state-chartered bank or trust company, does not violate the separation of powers provision of the Tennessee Constitution?

STATEMENT OF THE CASE

This case began on May 18, 2004, when Appellee, the Commissioner of the Tennessee Department of Financial Institutions (“Commissioner”), took emergency possession of Sentinel Trust Company (“Sentinel”), a state-chartered trust company, and filed such Notice of Possession with the Lewis County Chancery Court, pursuant to Tenn. Code Ann. §§ 45-2-1502(b)(1) and (c)(1).¹ The Notice stated that the Commissioner had found: (1) that Sentinel had used pooled fiduciary funds, that were to be held in trust for certain bond issues, to provide operating capital for non-related defaulted bond issues, thereby creating a fiduciary cash shortfall that greatly exceeded Sentinel’s current operating capital and, (2) that Sentinel had failed to reconcile fiduciary cash and corporate cash accounts in a timely and accurate fashion and had otherwise

¹TR, Vol. 1, 56-57.

failed to keep accurate books and records.² The Commissioner further found that Sentinel's potential liability for the cash shortfall in the pooled fiduciary account exceeded its current capital level and that Sentinel has been unable to provide a viable capital plan that would eliminate the deficiency and make the account whole.³ Accordingly, the Commissioner found that the following grounds for possession, as set forth in Tenn. Code Ann. § 45-2-1502(a), existed: (1) Sentinel's business was being conducted in an unsound manner and (2) Sentinel was unable to continue normal operations.⁴ Additionally, as required by Tenn. Code Ann. § 45-2-1502(c)(1), the Notice of Possession provided that "[a]ny person aggrieved or directly affected by the Commissioner's emergency possession of Sentinel Trust Company may have judicial review in Davidson County Chancery Court by common-law writ of certiorari, as provided in Title 27, Chapter 9, of Tennessee Code Annotated."⁵

²*Id.*

³*Id.*

⁴*Id.*

⁵*Id.*

That same day, the Commissioner also issued an order appointing Receivership Management, Inc. to act as the Receiver of Sentinel (“Receiver”), pursuant to Tenn. Code Ann. § 45-2-1502(b)(2).⁶ On June 15, 2004, the Receiver and Department personnel issued a preliminary report (“the Report”) on the fiduciary and corporate financial positions of Sentinel, based upon a review of Sentinel’s records.⁷ Those records reflected that Sentinel had a cash deficiency or shortfall in the pooled fiduciary account⁸ that ranged from \$7,612,218.00 to \$8,430,722.00.⁹ The Report further showed that, as of May 18, 2004, Sentinel had total corporate assets of \$1,389,682. Taking into account the cash deficiency in the pooled fiduciary account (which is reflected as an accounts payable), the Report determined that Sentinel was insolvent in an amount of at least \$6,225,445 as of May 18, 2004.¹⁰

⁶TR. Vol. 1, 59-73.

⁷*Id.*; AR, Vol. III, 623-641.

⁸The pooled fiduciary account is a Sentinel account held at SunTrust Bank, in which funds were deposited, in trust, by bond issue borrowers and/or issuers for payment of principal and interest and other matters associated with the particular bond issue. The funds in that account were co-mingled by Appellants and were withdrawn by them for purposes other than for what the funds were deposited.

⁹*Id.* at 92-93.

¹⁰*Id.* at 94. This insolvency does not include the \$559,873 in bond principal and interest checks discussed, *supra*, which increases the fiduciary cash deficiency, and would increase the insolvency by a corresponding amount.

Based upon the findings contained in the Report and the record as a whole, the Commissioner determined that liquidation of Sentinel in accordance with the provisions of Tenn. Code Ann. §§ 45-2-1502(c)(2) and 1504 was necessary and appropriate. Accordingly, on June 18, 2004, the Commissioner issued a Notice of Liquidation of Sentinel Trust Company.¹¹ On June 29, 2004, Appellants, who are the former officers and directors of Sentinel Trust Company, filed a petition in Davidson County Chancery Court for a writ of supersedeas and common law writ of certiorari, seeking supervisory judicial review of the Commissioner's decisions to take possession of and to liquidate Sentinel Trust Company.¹² The Petition rested primarily upon the assertion that since "no statute provides that the term "bank" includes "trust company" with reference to any other provisions of the Tennessee Banking Act", the Commissioner had no authority to exercise any of his "bank regulatory powers" against Sentinel, a non-banking trust company, including Tenn. Code Ann. § 45-2-1502, which authorizes the Commissioner to take possession of a state bank in certain circumstances.¹³ Instead, Petitioners asserted that the Commissioner only had

the general power to enforce applicable laws against trust companies, including both statutes applicable by their terms only to trust companies (*supra*, ¶ 7), and statutes in the Tennessee Banking Act concerning fiduciary functions which, by their explicit terms, are applicable both to trust companies and to banks authorized to exercise fiduciary powers, T.C.A. §§ 45-2-1002-1006.¹⁴

¹¹TR., Vol. IV, 77; AR, Vol. III, 644-646.

¹²TR, Vol. I, 1-22.

¹³*Id.* at ¶ 9.

¹⁴*Id.*

The writ of certiorari was subsequently issued on July 1, 2004.¹⁵

On July 16, 2004, Appellants filed a motion requesting an expedited hearing on the petition for *writ of supersedeas only*.¹⁶ On July 26, 2004, the Commissioner filed a response stating that he had no objection to an expedited hearing on the petition for writ of supersedeas, and further, requested that the Court hold immediate hearings on both the petition for writ of supersedeas and for writ of certiorari.¹⁷ The following day, July 27, 2004, the Commissioner filed under seal the Administrative Record before the Commissioner, pursuant to Tenn. Code Ann. § 27-9-109, as well as his response in opposition to both the petition for writ of certiorari and writ of supersedeas.¹⁸

¹⁵TR, Vol. II, 172-173.

¹⁶TR, Vol. II, 190-196.

¹⁷TR, Vol. III, 389-90.

¹⁸TR, Vol. III, 391-92.

A hearing on the petition for writ of supersedeas was held on August 5, 2004.¹⁹ Prior to that hearing, the trial court offered to consolidate the hearing on the request for supersedeas with review by common-law writ of certiorari and schedule such hearing within 7-10 days so that all issues before the Court could be timely resolved.²⁰ The Commissioner was in agreement that a single hearing on all the issues was appropriate and was willing to stay the ongoing liquidation of Sentinel until such hearing. However, Appellants were not willing to agree to a consolidated hearing, but instead, sought to proceed solely on the request for supersedeas, based upon the legal argument that the Commissioner was acting without statutory authority.²¹

¹⁹TR, Vol. V, 633-34. On August 9, 2004, an order was entered transferring the case from Part I, Davidson County Chancery Court to Judge Kurtz, Fifth Circuit, Davidson County Circuit Court. TR, Vol. VI, 681.

²⁰TR, Vol., VI, 684.

²¹*Id.*

On August 9, 2004, the court issued a memorandum and order denying the Petition for Writ of Supersedeas.²² In doing so, the court first noted that “the lawyer for the petitioners has chosen the battleground. He has chosen to not yet enter the factual fray but has chosen the law as his weapon.”²³ The court then went on to find that the “Tennessee banking laws contained in Chapters 1 and 2 of Title 45 fully apply to trust companies and that these statutes are constitutional.”²⁴ As such, the Court found that the Commissioner had acted with express statutory authority in taking possession and determining to liquidate Sentinel Trust Company.²⁵ The Court did not, however, make an opinion as to the factual foundation supporting the decisions to take possession and liquidate, as such issues had not been presented to the Court.²⁶

On August 13, 2004, Appellants filed a motion with the trial court requesting that the court: (1) vacate or revise its August 9th order; (2) enter final judgment for Appellants upon both the writs of certiorari and supersedeas on the basis of the pleadings; (3) reserve to Appellants the right to an evidentiary hearing; and, (4) grant an immediate interlocutory appeal in the event this Court declines to vacate or revise its previous order.²⁷

²²TR, Vol. VI, 682-694.

²³*Id.* at 688.

²⁴*Id.* at 693.

²⁵*Id.* at 691.

²⁶*Id.* at 693.

²⁷TR, Vol. VI, 701-705.

On August 24, 2004, the trial court issued an Order denying the motion, adhering to its decision and reasoning set forth in its August 9 Memorandum and Order.²⁸ The court did, however, grant Appellants permission to seek an interlocutory appeal pursuant to Rule 9 of the Tennessee Rules of Appellate Procedure.²⁹ On August 27, 2004, Appellants filed an Interlocutory Application for Permission to Appeal and Application for Extraordinary Appeal pursuant to Tenn.R.App.P. 9 and 10.³⁰ On September 1, 2004, the Court of Appeals issued an order dismissing both appeals.³¹ In that Order, this Court stated as follows:

²⁸TR, Vol. VII, 819-821.

²⁹*Id.*

³⁰*See Sentinel Trust Company, et al. v. Kevin P. Lavender*, App. No. M2004-02068-COA-R10-CV.

³¹TR, Vol. VII, 823.

Having reviewed the application and supporting documents, we cannot conclude that an interlocutory appeal is necessary to prevent irreparable harm or to prevent needless, expensive and protracted litigation. Nor can we conclude that the trial court has so far departed from the acceptable and usual course of judicial proceedings as to require immediate review under Tenn.R.App.P. 10.³²

No further action took place in this case until March 4, 2005, when Appellants filed a motion with the trial court requesting that the case be transferred to the Lewis County Chancery Court for hearing in the ongoing receivership action, or in the alternative to set a scheduling conference so that a trial date could be set.³³ After a status conference, the court issued an order setting a final hearing for March 29, 2005.³⁴ The court further noted that its scope of review was governed by T.C.A. § 27-9-111 and was restricted to the record below, but that additional evidence could be introduced on the question of whether the Commissioner exceeded his jurisdiction or acted illegally, arbitrarily, or capriciously.³⁵ Further, because this was a post-seizure hearing, the court held that it would be liberal in allowing the introduction of evidence in order to insure that the hearing fully complied with the concepts of due process, even though

³²*Id.*

³³TR, Vol. VII, 842-844.

³⁴TR, Vol. VII, 865-867.

³⁵*Id.*

Appellants had waited approximately eight (8) months post-seizure to ask for a hearing challenging the Commissioner's factual determinations.³⁶ By the time of the hearing, *all* of Sentinel's bond issues had been transferred by the Receiver to new fiduciaries, with the exception of four defaulted bond issues that were in the process of being worked out.

³⁶*Id.*

After a two-day evidentiary hearing, the court issued a memorandum and order on April 13, 2005, denying the petition for writ of certiorari and dismissing the case.³⁷ In doing so, the court first noted that any failure to have a prompt post-seizure hearing challenging the factual basis for the Commissioner's seizure was entirely the fault of the Appellants.³⁸ The court then found that because the factual challenge had been delayed so long by Appellants, the case was now moot, as the receivership and liquidation had been proceeding for eleven (11) months and Sentinel was nothing but an empty shell.³⁹

The court went on to find that if it were to reach the factual merits, it would affirm the actions of the Commissioner. Specifically, the court found that "the facts support the conclusion of the Commissioner that an emergency existed and that the money in the pooled trust account belonging to the bond holders was in immediate threat if he did not act" and that the record further supported the Commissioner's decision to liquidate.⁴⁰

³⁷TR, Vol. VII, 921-952.

³⁸*Id.* at 947.

³⁹*Id.* at 948.

⁴⁰*Id.* at 952.

Appellants timely filed a notice of appeal on April 19, 2005.⁴¹ The Court of Appeals issued its Opinion and Judgment on December 29, 2005, affirming the decision of the trial court in all respects. Appellants timely filed their application for permission to appeal on February 24, 2006.

STATEMENT OF RELEVANT FACTS

The relevant facts are set forth in the Opinion and Judgment of the Court of Appeals entered on December 29, 2005, a copy of which is attached hereto and incorporated herein by this reference.

ARGUMENT

In determining whether to grant permission to appeal, Rule 11 of the Rules of Appellate Procedure lists the following factors, which neither fully control nor fully measure the Court's discretion, but indicate the character of reasons that will be considered:

1. The need to secure uniformity of decision;
2. The need to secure settlement of important questions of law;
3. The need to secure settlement of questions of public interest; and
4. The need for the exercise of the Supreme Court's supervisory authority.

The Commissioner submits that none of these factors is present and, therefore, this Court should deny Appellants' application for permission to appeal. Moreover, review proceedings by this

⁴¹TR, Vol. III, 954-55.

Court are not appropriate, as both the trial and appellate court found that there was no effectual or practical relief that could be granted and, therefore, that the case was moot.

This Court stated in *Boyce v. Williams*, 389 S.W.2d 272 (Tenn. 1965):

The rule is well established that review proceedings are not allowed for the purpose of settling abstract questions, but only to correct errors injuriously affecting the rights of some party to the litigation. Accordingly, an appeal of error proceeding will be dismissed if the question presented by it . . . has become moot or academic or if, . . . an event has occurred which makes a determination of it unnecessary or renders it impossible for an appellate court to grant effectual relief.

By the time a factual hearing on the Commissioner's decision to take possession of and liquidate Sentinel Trust Company occurred in late March, 2005, the receivership had been under way for approximately eleven months and all of Sentinel's bond issues, with the exception of four defaulted bond issues in workout, had been transferred to successor trustees. Thus, both the trial and appellate court found that Sentinel was in essence an empty shell and that the ongoing liquidation and transfer of Sentinel's assets made it impossible for either court to grant effectual relief. In light of this determination that the case is moot as there is no practical or effectual relief that can be granted, Appellants' Application presents no circumstances establishing the need to secure uniformity of decision, the need to secure settlement of important questions of law, the need to secure settlement of questions of public interest, or the need for exercise of this Court's supervisory authority.

Moreover, even if this case were not moot, Appellants' Application simply does not establish that the issues raised in this appeal are either important questions of law or public interest so as to justify plenary review. Appellants first assert that this case "demonstrates the

continuing need for this Court to expound the law of certiorari” because it involved the actions of a single official, and not the actions of a board or commission arising from an administrative hearing. Although unclear, it appears that Appellants are arguing: (1) that the trial court should have held an *de novo* evidentiary hearing and (2) that the court of appeals should have conducted a *de novo* appellate review of the decision of the trial court, rather than a limited review under the common law writ of certiorari. However, the record is clear that Appellants were afforded an evidentiary hearing by the trial court. Moreover, as Appellants never raised the issue of the appropriate scope of review with the Court of Appeals, there is no need for this Court to “expound on the law of certiorari.”

The other two grounds asserted by appellants seek to correct alleged errors of law in the Court of Appeals’ decision. Specifically, they seek to correct the concurrent findings of the trial and appellate courts that the Tennessee Banking Act does not violate the Separation of Powers provision of the Tennessee Constitution and that the Commissioner did not exceed his jurisdiction or act illegally in taking possession of Sentinel, as all of the provisions of the Tennessee Banking Act apply to state chartered trust companies. Appellants do not cite, however, any contrary authority that would suggest a need to secure uniformity of decision or to settle important questions of law. Rather, it is apparent from the Application that Appellants simply disagree with these decisions of the trial and appellate courts.

Simply put, Plaintiff’s application for permission to appeal seeks to correct alleged errors of law in the Court of Appeals’ decision and fails to establish that the issues in this appeal are either important questions of law or public interest to justify plenary review, particularly in light of the concurrent finding by the lower courts that the case is moot. Nonetheless, the Commissioner

in this answer in opposition to the application for permission to appeal will respond to Plaintiff's legal arguments to make clear that not only are the questions raised of insufficient legal or public importance to merit review by this Court, but in fact, that the Court of Appeals was correct in all of its legal conclusions in its opinion.

A. The Court of Appeals Was Correct In Finding That All the Provisions of The Tennessee Banking Act Apply to State Chartered Trust Companies And, Therefore, That the Commissioner Did not Exceed His Jurisdiction of Act Illegally in Taking Possession of Sentinel Trust Company.

Appellants' case, both before the trial court and the Court of Appeals, rested primarily upon a statutory construction argument, and in particular, the proper interpretation and application of Tenn. Code Ann. §§ 45-1-124 and 45-2-1502. Appellants took the position that "no statute provides that the term "bank" includes "trust company" with reference to any other provisions of the Tennessee Banking Act" and, therefore, the Commissioner had no authority to exercise any of his "bank regulatory powers" against Sentinel, a non-banking trust company, including Tenn. Code Ann. § 45-2-1502 which authorizes the Commissioner to take possession of a state bank in certain circumstances.⁴² Thus, Appellants assert that the Commissioner exceeded his jurisdiction and/or acted illegally when he took possession of Sentinel pursuant to the provisions of Tenn. Code Ann. § 45-2-1502.

⁴²TR, Vol. I, 1-22.

The trial court rejected this argument, finding that “Tennessee banking laws contained in Chapters 1 and 2 of Title 45 fully apply to trust companies and that these statutes are constitutional.”⁴³ The trial court further found that the Commissioner had acted with express statutory authority in taking possession and determining to liquidate Sentinel Trust Company.⁴⁴ These findings were affirmed by the Court of Appeals, and as found by that court, are clearly supported by the plain and ordinary meaning of the statutory language contained in Tenn. Code Ann. § 45-1-124(b) and (d).

The Tennessee Banking Act was first adopted by the General Assembly in 1969 and only directed that all state banks be operated in accordance with its provisions.⁴⁵ In 1980, the General Assembly amended the Act to expand the scope of its application, providing as follows:

provided, however, a state bank or trust company whose purposes and powers are limited to fiduciary purposes and powers shall be subject only to the provisions pertaining to fiduciaries in Chapters 1 through 11 of this title and such other provisions of said chapters as the Commissioner determines are reasonably necessary for the sound operation of such banks or trust companies.⁴⁶

The General Assembly further provided that “[n]o trust company hereafter may be incorporated or be qualified to act as a fiduciary unless it is incorporated under Chapters 1 through 11 of this title, or the laws governing national banking associations.”⁴⁷

⁴³*Id.* at p. 12.

⁴⁴*Id.* at p. 10.

⁴⁵TR, Vol. V, 543-546.

⁴⁶*Id.* at 547 - 548, codified at Tenn. Code Ann. § 45-1-124.

⁴⁷*Id.* at § 4.

In 1999, the General Assembly once again amended the Act to specifically make trust companies subject to all of its provisions, and not just those pertaining to fiduciaries. Section 3 of Chapter 112 of the Public Acts of 1999 amended Tenn. Code Ann. § 45-1-124(b) by deleting that subsection and substituting the following:

(b) To the full extent consistent with such rights, liabilities and penalties, all state banks and, to the extent applicable, all banks, shall hereafter be operated in accordance with the provisions of this chapter and Chapter 2 of this title. ***Unless the Commissioner determines otherwise, the provisions of Title 45, Chapters 1 and 2 and the rules thereof shall also apply to the operation and regulation of state trust companies and banks whose purposes and powers are limited to fiduciary purposes and powers.***

Section 4 of Chapter 112 further amended Tenn. Code Ann. § 45-1-124 to add the following new subsection:

() The charter of a trust company granted by the commissioner shall not be void due to the enactment of any amendment or repeal of the laws under which it was formed if such trust company is in operation, as determined by the commissioner, on July 1, 1999.

() Companies engaged in activities subject to Title 45, Chapters 1 and 2, on July 1, 1999, but formed, as determined by the commissioner, prior to the enactment of Chapter 620 of the Public Acts of 1980 and not previously subject to regulation by the commissioner may continue to act as a fiduciary without submitting an application. ***However, such entities shall otherwise be fully subject to Chapters 1 and 2.***

() Companies authorized by their charter, prior to the enactment of Chapter 620, to engage in fiduciary activities, but not engaging in fiduciary activities on July 1, 1999, then must file the appropriate application to establish a trust company and ***then fully comply with Chapters 1 and 2.***

() ***All state trust companies operating on July 1, 1999, shall have such period of time as the commissioner***

determines to be reasonable and prudent to conform to the requirements of Chapters 1 and 2 and the regulations thereunder, but such period shall not exceed three (3) years from July 1, 1999. During this period of time, to conform to the requirements of Chapters 1 and 2, the commissioner may conduct examinations at such company's expenses, and apply the requirements of Chapters 1 and 2 as deemed appropriate.⁴⁸

⁴⁸TR, Vol. V, 549-556 (emphasis added).

The most fundamental rule of statutory construction is that *the intention of the legislature must prevail*.⁴⁹ Thus, courts must ascertain and then give the fullest possible effect to the General Assembly's purpose in enacting a statute as reflected in the statute's language.⁵⁰ Furthermore, this Court has held that where the language of a statute is clear and unambiguous, the courts must interpret the statute as written,⁵¹ rather than using the tools of construction to give the statute another meaning.⁵² Here, the language of Tenn. Code Ann. § 45-2-124 clearly and unambiguously reflects the Legislature's intent that all provisions of chapters 1 and 2 of the Banking Act apply to the operation of trust companies in this state.

⁴⁹*McGee v. Best*, 106 S.W.3d 48, 64 (Tenn.Ct.App.), *p.t.a. denied* (2002) ("The rule of statutory construction to which all others must yield is that the intention of the legislature must prevail."). *See also*, *Southern v. Beeler*, 183 Tenn. 272, 195 S.W.2d 857 (1946); *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn.Ct.App. 1995); *City of Humboldt v. Morris*, 579 S.W.2d 860, 863 (Tenn.Ct.App. 1978).

⁵⁰*Jones v. Garrett*, 92 S.W.3d 835, 839 (Tenn. 2002); *Robinson v. LeCorps*, 83 S.W.3d 718, 722 (Tenn. 2002).

⁵¹*Kradel v. Piper Indus., Inc.*, 60 S.W.3d 744, 749 (Tenn. 2001); *ATS Southeast, Inc., v. Carrier Corp.*, 18 S.W.3d 626, 629-30 (Tenn. 2000); *Lavin v. Jordon*, 16 S.W.3d 362, 365 (Tenn. 2000).

⁵²*Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 83 (Tenn. 2001); *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000).

Appellants, however, would have the courts ignore the clear language of Tenn. Code Ann. § 45-1-124, and instead focus solely on the definition of “state bank” to the exclusion of all other provisions of the Bank Act. Because that definition does not include trust companies, Appellants argue that the Commissioner cannot assert bank regulatory authority over a trust company. In particular, Appellants assert that the Commissioner has no authority to take possession of a trust company under Tenn. Code Ann. § 45-1-1502, because that statute only speaks in terms of a “state bank.”⁵³

⁵³Tenn. Code Ann. § 45-2-1502 provides in part as follows:

- (a) The commissioner may take possession of a state bank if, after a hearing, the commissioner finds:
 - (1) Its capital is impaired or it is otherwise in an unsound condition;
 - (2) Its business is being conducted in an unlawful or unsound manner;
 - (3) It is unable to continue normal operations; or
 - (4) Its examination has been obstructed or impeded.
- * * *
- (c)(1) If, in the opinion of the commissioner, an emergency exists which will result in serious losses to the depositors, the commissioner may take possession of a state bank without a prior hearing. Any person aggrieved and directly affected by this action of the commission may have a review by certiorari as provided in title 27, chapter 9.

This argument is directly contrary, however, to the clearly expressed intent of the General Assembly as set forth in Chapter 112. Generally, the search for a statute's meaning should begin with the words of the statute itself.⁵⁴ The courts must give these words their natural and ordinary meaning unless the context in which they are used requires otherwise.⁵⁵ Further, because words are known by the company they keep,⁵⁶ courts should construe a statute's words in the context of the entire statute and in light of the statute's general purpose. Additionally, courts have a duty to construe a statute so that no part will be inoperative, superfluous, void or insignificant, and so that no section will destroy another.⁵⁷ Tenn. Code Ann. § 45-1-124 specifically states that ***“the provisions of Title 45, Chapters 1 and 2 and the rules thereof shall also apply to the operation and regulation of state trust companies*** and banks whose purposes and powers are limited to fiduciary purposes and powers.”⁵⁸ Tenn. Code Ann. § 45-2-1502 clearly is a provision contained within Chapter 2 of Title 45 and, therefore, applies to the operation and regulation of Sentinel Trust Company. The language of Tenn. Code Ann. § 45-2-124 is plain and unambiguous and clearly expresses the Legislature's intent and, therefore, no further analysis is needed.

⁵⁴*Blankenship v. Estate of Bain*, 5 S.W.3d 647, 651 (Tenn. 1999); *Freedom Broadcasting of Tenn., Inc. v. Tennessee Dep't of Revenue*, 83 S.W.3d 776, 781 (Tenn. Ct. App. 2002).

⁵⁵*Nashville Golf & Athletic Club v. Huddleston*, 837 S.W.2d 49, 53 (Tenn. 1992); *Lockheed Martin Energy Sys. v. Johnson*, 78 S.W.3d 918, 923 (Tenn.Ct.App. 2002).

⁵⁶*State ex rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 754-55 (Tenn.Ct.App. 2001).

⁵⁷*Mangrum v. Owens*, 917 S.W.2d at 246 (citing *City of Caryville v. Campbell County*, 660 S.W.2d 510, 512 (Tenn.Ct.App., 1983); *Tidwell v. Collins*, 522 S.W.2d 674, 676 (Tenn. 1975)).

⁵⁸*See* Tenn. Code Ann. § 45-2-124(b) (emphasis added).

Accordingly, the Court of Appeals correctly found that all provisions of the Tennessee Banking Act apply to state chartered trust companies and, therefore, that the Commissioner did not exceed his jurisdiction or act illegally in taking possession of Sentinel Trust Company.

B. The Court of Appeals Was Correct in Finding That the Tennessee Banking Act Does Not Violate The Separation of Powers Provision of the Tennessee Constitution.

While not articulating their specific objections, Appellants appear to take issue with the Court of Appeals' finding that the Tennessee Banking Act, which authorizes the Commissioner to take possession of and to appoint a receiver for a state-chartered bank or trust company under certain circumstances, does not violate the separation of powers provision of the Tennessee Constitution. Appellants assert that the power to impose a receivership is and has always been among the judicial powers vested in the Courts of Tennessee, and it is forbidden that any statute vest, or be construed as vesting any part of such judicial power in any member of the Legislative or Executive Departments of the State of Tennessee. As such, Appellants assert that the Commissioner's appointment of a receiver was in violation of the doctrine of separation of powers and was, therefore, void.

The Tennessee Constitution states that "[t]he powers of the government shall be divided into three distinct departments: the Legislative, Executive and Judicial," and that "[n]o person or persons belong to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted."⁵⁹ The Tennessee

⁵⁹Tennessee Constitution, Art. II, §§ 1 and 2.

Constitution does not define the powers of each department in express terms.⁶⁰ However, the Tennessee Supreme Court has restated a simplified description of each of these roles when it noted that “[t]he legislative branch has the authority to make, alter, and repeal the law; the executive branch administers and enforces the law; and the judicial branch has the authority to interpret and apply the law.”⁶¹

⁶⁰See Art. II, § 3, which vests all legislative authority in the General Assembly; Art. III, § 1, which vests the executive power in the Governor; and Art. VI, § 1, which vests the judicial power in the Supreme Court and the circuit, chancery and other courts established by the General Assembly.

⁶¹*Richardson v. Tennessee Bd. of Dentistry*, 913 S.W.2d 446, 453 (Tenn. 1995).

While the departments of government have been characterized as “independent” and “co-equal,”⁶² they have also been viewed as “interdependent” because their functions overlap.⁶³ Thus, while the doctrine of separation of the powers, as set out in and Article II, §§ 1 and 2, is a fundamental principle of American constitutional government, it has long been recognized that it is impossible to preserve perfectly the theoretical lines of demarcation between the executive, legislative and judicial branches of government.⁶⁴ As this Court noted in *Richardson v. Young*:

There are also some powers which, on account of the complexity of governmental functions, are difficult to classify, and may be, with equal propriety and correctness, committed to more than one department. . . .

There are many acts possessing a legislative, executive or judicial character, especially peculiar to the very nature of our system, and necessarily inherent in it. Which time out of mind have not been exclusively exercised by these departments, and which, for the ease and efficiency of our system, could not be so exercised.⁶⁵

⁶²*Mayhew v. Wilder*, 46 S.W.3d 760, 783 (Tenn.Ct.App.), *p.t.a. denied* (2001)(citing *Summers v. Thompson*, 764 S.W.2d 182, 189 (Tenn. 1988); *Moore v. Love*, 171 Tenn. 682, 686-87. 107 S.W.2d 982, 983-84 (1937)).

⁶³*Id.* (citing *State v. King*, 973 S.W.2d 586, 588 (Tenn. 1998); *Underwood v. State*, 529 S.W.2d 45, 47 (Tenn. 1975)).

⁶⁴*Bank of Commerce and Trust Company v. Senter*, 149 Tenn. 569, 260 S.W. 144, 151 (1924); *Richardson v. Young*, 122 Tenn. 471, 493, 125 S.W. 664 (1910).

⁶⁵122 Tenn. at 493-496, 125 S.W. 664.

This Court has further recognized that a legislative enactment which does not frustrate or interfere with the adjudicative function of the courts does not constitute an impermissible encroachment upon the judicial branch of the government.⁶⁶

⁶⁶*Underwood v. State*, 529 S.W.2d 45, 47 (Tenn. 1975).

It is fundamental that the General Assembly may confer on the Commissioner only those judicial powers reasonably necessary to accomplish those purposes for which the Department was created. The underlying purpose of the Tennessee Banking Act is to provide the citizens of Tennessee with a sound system of state chartered financial institutions, including the sound conduct of the business of such institutions and conservation of their assets.⁶⁷ The Court of Appeals found that the powers enumerated in Tenn. Code Ann. § 45-2-1502 authorizing the Commissioner to appoint a receiver, to remove corporate directors, and the power to declare state chartered banks and trust companies insolvent are powers required to enable the Commissioner to fulfil his statutory mandate under Tenn. Code Ann. § 45-1-102. Accordingly, that Court held that “[t]he powers bestowed upon the Commissioner are limited to those judicial powers reasonably necessary as an incident to the accomplishment of the purposes for which the Department of Financial Institutions was created.”

Appellants do not dispute this finding in their Application, but instead, argue that the term “quasi-judicial” is too imprecise and can be used to reach a decision that “purports to legitimate actual breaches of the required separation of powers.” However, as noted above, the Court of Appeals’ did not base its decision upon whether the Commissioner was exercising “quasi-judicial” powers, but instead, whether the powers conferred in Tenn. Code Ann. § 45-2-1502 were required to enable the Commissioner to fulfil his statutory mandate under Tenn. Code Ann. § 45-1-102 and, therefore, reasonably necessary as an incident to the accomplishment of the purposes for which the Department of Financial Institutions was created. In light of Appellants’ failure to

⁶⁷See Tenn. Code Ann. § 45-1-102(a) (2000).

dispute this finding, the Court of Appeals correctly found that the Tennessee Banking Act does not violate the separation of powers provision of the Tennessee Constitution.

CONCLUSION

For these reasons, the Commissioner respectfully requests that this Court deny Appellants' Application for Permission to Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response has been sent by first-class U.S. Mail, postage prepaid, to:

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this _____ day of March, 2006.

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